

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6063 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MUKESH KHUSALDAS SOMAIYA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR HR PRAJAPATI for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

-----  
CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

#### ORAL JUDGEMENT

1. The petitioner was detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act'] by virtue of an order passed by Police Commissioner, Rajkot city, Rajkot, on 16th February 1999 in exercise of powers under sub-section [1] of section 3 of the PASA Act.

2. The detaining authority recorded that the petitioner is involved in bootlegging. One offence is

registered against him under the Bombay Prohibition Act, at Rajkot. The statements of witnesses whose identity has not been disclosed are taken into consideration by the detaining authority to conclude that the petitioner's action has resulted into disruption of public order and therefore, he requires to be detained under the PASA Act. The detaining authority also recorded that the petitioner is in custody. Although he has been ordered to be released on bail on his furnishing a surety of Rs.10,000/-, he has not done so and therefore, he is in custody, but he is likely to be released on bail and is again likely to indulge into bootlegging and antisocial activities and therefore, he is required to be detained.

3. The petitioner has approached this Court with a petition under Article 226 of the Constitution of India. The petitioner has raised many contentions, one of which being that the detaining authority has failed to consider the availability of remedy of getting the bail cancelled granted to the petitioner and therefore, the order suffers from the defect of non-application of mind.

4. Mr. Prajapati, learned Advocate has placed reliance only the above ground. He submitted that, as per the settled legal proposition, non-consideration of the less drastic remedy in the nature of cancellation of bail would amount to non-application of mind which would vitiate the order of detention. He has pressed into service the decision of a decision of the Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th September, 1999.

5. Factually, a plain perusal of the order of detention and the grounds of detention indicate that the detaining authority has not considered the possibility of resorting to a less drastic remedy in the nature of resorting to section 437[5] of the Code of Criminal Procedure for cancellation of bail. This is a clear non-application of mind, as has been held by the Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th September, 1999.

7. In view of above, the petition deserves to be allowed on this ground alone and the same is allowed accordingly. The impugned order of detention passed by

the Police Commissioner, Rajkot city, Rajkot on 16th of February, 1999 in respect of the petitioner Mukesh Khushaldas Somaiya, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

\*\*\*\*\*

parmar\*